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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 8215 of 2000

Between:

1 The Government of A.P. rep., by its Principal Secretary,

Education Department,
[Technical Education] Secretariat Buildings, Hyderabad.
2 The Commissioner of Technical Education, A.P., Hyderabad.
3 A.P. College Service Commissioner,

Government of A.P., Hyderabad.

..... PETITIONERS

AND

1 C. Muralinatha Gupta, S/o. Churuku Venkata Ramanaiah Chetty,
Polytechnic College, Tirupathi.
2 Smt. R. Nirmalatha, D/o. R. Krishna Murthy,
Polytechnic College, Kakinada.
3 M. Laxmi Kumari, D/o. M. Krishna Murthy,
Polytechnic College, Kakinada.
4 P. Bhaskaraiah, S/o.P. Chengaiah,
Polytechnic College, Kurnool.
5 K. Sarojini, D/o. K. Eashwaraiah,
Polytechnic College, Hyderabad.
6 G. Vanaja D/o. B. Lakshmikantham,
Polytechnic College,Warangal.
7 A.S. Mallikarjuna, S/o.A.S.Ramamurthy,
Polytechnic College, Visakhapatnam.

8 S. Rani Prameela, D/o.S.sVenkaiah,
Polytechnic College, Kurnool.
9 K. Ananda Rao, S/o. K. Yandu,
Polytechnic College, Visakhapatnam.
10 K. Ramakrishnaiah, S/o. Narsaiah,
Polytechnic College, Hindupur, Ananthapur District.
11 G. Umamaheswari D/o. G.Rajeswar Rao,
Polytechnic College, Hyderabad.
12 B. Krishna Rao S/o. Narasimha,
Working as Head of Pharmacy Section,

Government Polytechnic for Women, Hindupur,
Ananthapur District.

[R-12 is impleaded as per the Court Order dated 18.8.2001

in WPMP.No.20599/01].
13 Pharmacy Council of India, Combined Councils Building,

Temple Land, Kotla Road, New Delhi.
[R-13 is impleaded as per Court order dated 1.3.2004

in WPMP.No.814 of 2004]

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue notice, call for records and quash the order in O.A.No.5118/95 dated 4-8-1999 on the file of the A.P. Administrative Tribunal, Hyderabad, by issuing a Writ of Certiorari or any other appropriate writ or order or direction as the Hon'ble Court deems fit and proper.

Counsel for the Petitioners:GP FOR SERVICES II

Counsel for the Respondent Nos. 1 to 11: Mr. V. AJAY KUMAR

Counsel for the Respondent No.12: MR.P.V.S.S.S.RAMA RAO

Counsel for the Respondent No.13 :MR. T. SURYAKARAN REDDY

The Court at admission stage made the following :

THE HONOURABLE MRS.JUSTICE T. MEENA KUMARI

AND

THE HONOURABLE MR.JUSTICE S. ANANDA REDDY

W.P.No. 8215 of 2000

ORDER: (Per Hon'ble Mrs. Justice T. Meena Kumari)

This writ petition is preferred by the petitioner seeking for a direction to call for the records in O.A.No.5118 of 1995 and quash the order of the Tribunal passed in O.A. No : 5118 of 1995, dated 4.8.1999.

2. The respondents herein are the applicants before the Tribunal. They have been working as Skilled Assistants in different polytechnic Institutions of the State. When their cases are not considered for promotion to the post of Associate Lecturers and when a notification was issued for filling up the posts of Associate Lecturer, they have approached the Tribunal by filing O.A.No.5118 of 1995 seeking to set aside the Advertisement No.3/95, dated 3-8-1995 published in 'Deccan Chronicle' dated 10-8-1995 issued by the 3rd Respondent i.e. the Secretary, A.P. College Service Commission calling for the applications for appointment to the post of Associate Lecturers in Pharmacy and also, to direct the Respondents 1 and 2-appellants herein to promote them to the post of Associate Lecturers in the existing vacancies by taking into consideration their length of service as Skilled Assistants and to declare that the Degree of Bachelor of Science in Pharmacy Operations awarded by the Birla Institute of Technology and Science (BITS) Pilani, Rajasthan to the Applicants 1 to 6 and 11 is equivalent to that of Pharmacy offered by the other Universities and also declare that the Applicants are eligible for appointment by promotion to the post of Associate Lecturers. The Tribunal having observed that as per the amended Rules issued in G.O.Ms.No: 271, dated 28.9.1984, the applicants have fulfilled all the requirements and therefore, they are entitled to be considered for promotion to the post of Associate Lecturers, and disposed of the application with the following observations:

> 1) The Degree of Bachelor of Science in Pharmacy Operations by the Birla Institute of Technology and Science(BITS) Pilani(Rajasthan) is a valid degree for Consideration for promotion to the post of Associate Lecturer under the Rules issued in G.O.Ms.No.90, Education Department, dt.19-01-1970 and G.O.Ms.No.271, Labour Employment, Nutrition & Technical Education (T.E.2) Department, dated 28-09-1984.
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> 2) The Applicants are entitled to be promoted to the post of Associate Lecturers in Pharmacy in view of the provisions in G.O.Ms.No.271, Labour, employment, Nutrition & Technical Education (T.EW.2) Department.

3. Aggrieved by the same, the official respondents-appellants have preferred the

present writ petition on the ground that the applicants are not entitled for the promotion to the post of Associate Lecturers on the ground that the next promotion to the post of Skilled Assistants is the post of Demonstrator and from the said post, the next promotion is to the post of Associate Lecturer. But however, the post of Demonstrator has been abolished by virtue of G.O.Ms.No.948, Labour, Employment, Nutrition and Technical Education Department dated 23-12-1982 and also the teaching posts have been abolished in the Government Polytechnics. It has also been contended by the learned Government Pleader appearing for the appellants herein that the cadre of Associate Lecturers has also been abolished after a period of 5 years and the required qualification for holding the post of an Associate Lecturer, is the Degree in Engineering.

4. The learned Government Pleader also contended that in view of the said G.O., the respondents are not entitled for the next post of Associate Lecturers. It has also been further contended that as per the amended rules in G.O.Ms.No.271 Labour, Employment, Nutrition and Technical Education Department dated 28-09-1984, the candidate should possess a degree in Engineering.

5. It is further contended by the learned G.P. for the appellants that the Tribunal has no jurisdiction to declare that the degree in pharmacy obtained by the respondents is equivalent to that of pharmacy offered by the other Universities and thereby, the applicants 1 to 6 and 11 are eligible for promotion to the posts of Associate Lecturers.

6. On the other hand, the learned counsel appearing on behalf of the applicants supporting the order of the Tribunal contended that the order impugned, does not require any interference by this Court.

7. We have heard the learned counsel and perused the order impugned and the material available on record.

8. There is no dispute that the applicants have possessed the degree of pharmacy offered by the Bits Pilani. The Tribunal has declared that the said Degree is a valid Degree for considering promotion to the post of Associate Lecturers. But, in our considered view, the said finding has no legal basis in the absence of any rules or any authority. A perusal of the amended rules issued in G.O.Ms.No: 271, dated 28.9.1984, goes to show that for the post of Associate Lecturers in Non Engineering subjects in polytechnics, a candidate should possess a second class Master Degree

in the appropriate subject with not less than 50% of the marks in the subject concerned of a University in this State or any University in India established or incorporated by or under Central Act, Provincial Act or State Act. Even assuming that the applicants fall under the above amended rule, they must possess a Master Degree in the appropriate subject. But, according to the appellants, they had possessed only a mere Degree in pharmacy offered by Bits Pilani. As per the G.O.Ms.No:90 which was issued in the year 1970, the required qualification for the post of Asst.Lecturer in Pharmacy, possessing of a mere degree in pharmacy, is sufficient. Subsequently, by way of amended rules in G.O.Ms.No:271, which was issued in the year 1984, the required qualification for the post of Associate Lecturers in Non Engineering subjects in Polytechnic, is a Second Class Master Degree in the appropriate subject with not less than 50% of the marks in the subjects concerned of a University. Therefore, it can safely be said that G.O.Ms.No:90 overrides the amended rules issued in G.O.Ms.No:271. If that being the case, it is not known as to how the Tribunal could come to the conclusion that the degree possessed by the applicants is a recognized one for consideration for promotion to the post of Associate Lecturers.

9. In the present facts and circumstances of the case and in the light of the amended rules issued in G.O.Ms.No:271, We have no hesitation to hold that the Tribunal is hasty in observing that the Degree of pharmacy offered by Bits Pilani is a valid degree for consideration for promotion to the post of Associate Lecturers under the rules issued in G.O.Ms.No.90 read with G.O.Ms.No.271.

10. At this stage, while admitting the amended rules issued in G.O.Ms.No:271, it is contended by the learned counsel for the applicants that subsequently, number of orders have been issued by the Government viz., G.O.Ms.Nos.948, 74, 165, 169 dated 23-12-1982,
06-03-1984, 30-04-2001, 30-04-1991 extending the benefit by way of exemption to the personnel recruited. According to the learned counsel for the unofficial respondent-3rd appellant, different orders have been issued Government granting exemption to the G.O.Ms.No.948 to the personnel recruited/promoted in between 01-04-1981 to 30-03-1982 and also subsequently up to 13-04-1984. In support of his contention, the learned counsel has relied upon the proposals submitted by the Commissioner of Technical Education dated 07-02-2004 to the Principal Secretary to Government, High Education, TE Department and it is a self-contained proposal

for extending the exemption granted to different personnel who are similarly situated to that of applicants herein. He has also produced Annexure-A of the said proposals before this Court, wherein all the names of the applicants have been figured under the list of Skilled Assistants in pharmacy. A perusal of the proposals goes to show that only nine Skilled Assistants have been deprived of their promotion to the posts of Associate Lecturers by virtue of the issuance of different G.Os. by the appellant department. The issuance of said G.Os. has not been disputed by the learned Government Pleader.

11. For the reasons stated in the foregoing paragraphs, We hold that the order of the Tribunal suffers from legal infirmity and the same is liable to be set aside.

12. Accordingly, this writ petition is allowed and the order of the tribunal is set aside.

13. However, considering the rival contentions and also the proposals sent to the Government, We feel it appropriate to direct the 1st appellant to consider the proposals submitted by the Commissioner of Technical Education (2nd appellant) on 07-02-2004 if not already considered for extending the benefits to the applicants-respondents herein on par with the similarly situated persons by taking into consideration of the different orders issued by the Government from time to time. It is also made clear that in case the applicants-respondents herein are aggrieved by the orders of the 1st appellant, they are at liberty to agitate their rights before the appropriate forum.

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T. MEENA KUMARI,J.

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S. ANANDA REDDY,J.

Dt:08-02-2005.

Rns/kvh

To

1. Pharmacy Council of India, Combined Councils Building,

Temple Land, Kotla Road, New Delhi.

2. Two CD copies

3. One CC to MR.AJAYAKUMAR

4. The Registrar, Andhra Pradesh Administrative Tribunal,

Purana Haveli, Hyderabad.